

Exhibit 5

sales, along with an anticipated initial coin offering, described below, would fund Celsius's initial business operations.⁹²

B. Celsius's Business Entities.

On February 8, 2018, Mr. Mashinsky and Mr. Leon incorporated Celsius Network Inc. in Delaware, the first of the business entities that today are generally known as Celsius.⁹³ As of the filing of the chapter 11 petitions for Celsius Network Inc. and the related debtors, on July 12, 2022 (the "Petition Date"), Mr. Mashinsky owned 83.7%, and Mr. Leon owned 16.3%, of Celsius Network Inc.⁹⁴

On February 9, 2018, Celsius Network Inc. incorporated Celsius Network Limited as a United Kingdom private limited company.⁹⁵ Celsius Network Limited was the original entity through which Celsius operated its retail customer-facing business through the summer of 2021. Both Celsius Network Inc. and Celsius Network Limited maintained their corporate headquarters in the United Kingdom.⁹⁶

⁹² Examiner Interview of Ashley Harrell (Former Vice President of Finance and Director of Operations – Celsius, December 30, 2022).

⁹³ Entity Details, Celsius Network Inc., File No. 6748208, State of Delaware Department of State: Division of Corporations (February 8, 2018), <https://icis.corp.delaware.gov/eCorp/EntitySearch/NameSearch.aspx> (last visited January 29, 2023).

⁹⁴ *Chapter 11 Voluntary Petition for Non-Individual* dated July 13, 2022, *In re Celsius Network Inc.*, Case No. 22-10965 (MG) [Dkt. 1], at 6.

⁹⁵ Certificate of Incorporation of a Private Limited Company, Company No. 11198050, Companies House, Registrar of Companies for England and Wales (February 9, 2018) (listing a London address as Celsius Network Limited's proposed registered office address).

⁹⁶ Celsius Community Update — June 23, 2021, Medium (June 23, 2021), <https://celsiusnetwork.medium.com/celsius-community-update-june-23-2021-a28fca899091> (last visited January 29, 2023).

since a “large chunk of it [is] going into our wallet as founders earnings.”³¹² She noted that at that time (August 2020), “Alex [Mashinsky] is earning \$28k a week” in CEL rewards” and “[f]or a company that could lose, at this pace, 6 million before the end of year, I can’t possibly justify this. And we are using equity money that should be used strategically to grow the company. Are we doing that? I don’t think so.”³¹³ When asked in an interview with the Examiner why Celsius bought CEL back from the market rather than using Treasury funds, Mr. Perman responded that the answer lies in who holds the most CEL.³¹⁴

In fact, in the same early January 2021 Slack channel communication in which Mr. Mashinsky discussed the high cost of CEL buybacks, he also spoke about the need “to take unilateral action” concerning the price of CEL. Four days later, Mr. Mashinsky sold approximately \$440,000 worth of his own CEL, all of which Celsius purchased pursuant to resting orders in place to guard against sudden, significant CEL price drops.³¹⁵ These trades caused Ms. Urata-Thompson to comment, “we are talking about becoming a regulated entity and we are doing something possibly illegal and definitely not compliant.” In another communication on December 30, 2020, Ms. Harumi-Thompson wrote that

³¹² Urata-Thompson, Harumi, Slack (August 5, 2020), CEL-UCC-00277814, at 3.

³¹³ *Id.*

³¹⁴ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

³¹⁵ Mashinsky, Alex, Slack (January 3, 2021), CEL-UCC-00336290, at 1.

Mr. Leon, commented on the “need for better processes, signing things, approving things, [and] putting a foundation in place.”⁶⁵⁰ In January 2021, Committee members expressed a “need to more effectively monitor risks on an ongoing basis” and “to expand our capabilities to manage financial risks.”⁶⁵¹ And Mr. Mashinsky commented that Celsius’s Risk Team—in effect, Mr. Holert—was “understaffed and needs to better know our counterparties.”⁶⁵²

To address that gap, in the spring and summer 2021, Celsius hired a team of employees with substantial experience at traditional financial institutions, who began developing more robust frameworks to manage risk. Rodney Sunada-Wong, who previously worked at Morgan Stanley and Merrill Lynch, began as Chief Risk Officer in March 2021.⁶⁵³ Mr. Sunada-Wong brought in a new Risk Team, each of whom had lengthy resumes consisting of experience in the traditional finance industry: Brian Strauss for Credit Risk; Stevan Maglic for Liquidity Risk; and Tat Chan for Market/Operational Risk.⁶⁵⁴ Mr. Maglic (Head of Liquidity Risk and Analytics Infrastructure) noted that he and the other new

Committee Meeting Notes, Internal Company Document (December 11, 2020), CEL-UCC-42583.

⁶⁵⁰ Celsius, Risk Committee Meeting Notes, Internal Company Document (December 11, 2020), CEL-UCC-42583.

⁶⁵¹ Celsius, Risk Committee Meeting Notes, Internal Company Document (January 8, 2021), CEL-UCC-42590.

⁶⁵² *Id.*

⁶⁵³ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁶⁵⁴ *Id.*; Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022); Examiner Interview of Brian Strauss (Former Chief Credit Officer – Celsius, December 20, 2022).

leadership to direct trades inconsistent with Celsius's directionally-neutral strategy.⁸²⁰

After BTC prices had plunged 19% in December 2021 and continued to drop in early January 2022, the Risk Team observed that the trading desk had exceeded limits set for BTC exposure and as a result, faced "mounting losses."⁸²¹ Mr. van Etten pushed the trading desk to bring its position within the limits, but by the time he succeeded, prices had dropped from roughly \$47,500 at the beginning of January 2022 to under \$40,000, or another 16%.⁸²² Mr. Mashinsky responded by wresting control over the trading decisions and ordered the desk to shed its BTC position in light of the price drop.⁸²³

After Celsius had sold off so much BTC that it had entered into a net negative position, Mr. Sunada-Wong and others prevailed upon Mr. Mashinsky to return to a net neutral position.⁸²⁴ The below charts prepared by Celsius in connection with the Risk Team's postmortem⁸²⁵ illustrate the trades that Mr. Mashinsky directed:

⁸²⁰ Examiner Interview of Adrian Alisie (Global Head of Controls/Business Optimization – Celsius, October 31, 2022).

⁸²¹ Celsius, Postmortem Analysis, PowerPoint (February 11, 2022), CEL_EXAM-00161999.

⁸²² *Id.*

⁸²³ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023); Celsius, Postmortem Analysis, PowerPoint (February 11, 2022), CEL_EXAM-00161999; Lang, Paul, Slack (January 24, 2022), CEL_EXAM-00172343, at 3.

⁸²⁴ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁸²⁵ Celsius, Postmortem Analysis, PowerPoint (February 11, 2022), CEL_EXAM-00161999.

(4) Celsius was transparent with its customers;⁸⁷⁴

However, Celsius's public representations were often inconsistent with the facts, often most starkly represented by Mr. Mashinsky regularly making misleading and inaccurate public statements, including in AMAs and tweets.

The AMAs, meaning "Ask Mashinsky Anything," as a spin on the traditional "Ask Me Anything," were live-streamed every Friday afternoon beginning in April 2020.⁸⁷⁵ According to the Celsius website, the AMAs provided Mr. Mashinsky with the opportunity to give "an update on [the] state of the business and the product, and answer questions from the community."⁸⁷⁶ Mr. Mashinsky told the Examiner that the purpose of the AMAs was to "talk to customers," provide transparency, and to hear feedback from customers directly and "unfiltered."⁸⁷⁷ Mr. Mashinsky told the Examiner, "I just went on a show for an hour once a week to tell people how I feel."⁸⁷⁸

⁸⁷⁴ Proof of Community, Celsius, <https://celsius.network/proof-of-community> (last visited January 29, 2023) ("At Celsius, transparency is a critical part of our mission.").

⁸⁷⁵ Celsius created videos referred to as "AMAs" prior to 2020 but the regular Friday schedule was not implemented until 2020. Celsius, Fireside Finance Friday with Alex Mashinsky, YouTube (April 3, 2020), <https://www.youtube.com/watch?v=ServiceAgreement> dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. *Service Agreement* dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. *OsXvAsYZmV&list=ServiceAgreement* dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. *PLLjzjU2vvKVMNgmFM2oV79WQ0iSqf_5oV&index=45* ("We'll be doing these every week, every Friday, same time, same location."). The AMAs can be found on Celsius's YouTube channel at <https://www.youtube.com/@CelsiusNetwork/streams>. The Celsius YouTube channel had 69,300 subscribers as of January 2023.

⁸⁷⁶ Celsius, Why trust Celsius, <https://celsius.network/why-trust-celsius> (last visited January 29, 2023).

⁸⁷⁷ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁸⁷⁸ *Id.*

And on Celsius's YouTube channel, the caption to a September 24, 2021 video stated, "Our mission: To put unparalleled economic freedom in the hands of the people. Join the revolution, join Celsius and unbank yourself!"⁹²¹

The internal Brand Guidelines encouraged Marketing personnel to include this theme in its public messages, including with language such as,

[t]he financial industry has a history of hurting groups of people and thwarting their dreams of financial independence with exclusionary or exploitative practices. But we're not for a wealthy group of a few elites. We're for democratized wealth for all.⁹²²

Celsius publicly described how it created "democratized wealth for all" through its business model in a since-deleted blog post, stating that,

[t]he Celsius business model is structured to do the exact opposite of what banks do — by giving 80% of total revenue back to our community each week in the form of earned interest. We earn profits by lending coins to hedge funds, exchanges, and institutional traders, and by issuing asset-backed loans at an average of 9% interest.⁹²³

Mr. Mashinsky publicly promoted the concepts of transparency, trust, and financial freedom in press interviews and in quotes he provided for industry publications. The Examiner reviewed more than 350 articles in which Mr. Mashinsky was quoted. Selected quotations include the following:

⁹²¹ Celsius, A message to the Songbird (SGB) community, YouTube (September 24, 2021), <https://www.youtube.com/watch?v=6CTpXjZrTsQ>.

⁹²² Celsius, Brand Guidelines July 2021, Internal Company Document (July 2021), CEL_EXAM-00178843 at 4.

⁹²³ Celsius Network Interest Rates, Explained, Celsius (April 24, 2019), <https://web.archive.org/web/20210623012453/https://celsiusnetwork.medium.com/celsius-network-interest-rates-explained-a336a52e163d>; Urata-Thompson, Harumi, What We Do & How We Do It, Celsius (August 19, 2020), [https://web.archive.org/Service Agreement](https://web.archive.org/Service%20Agreement) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. web/20201126015631/https://celsiusnetwork.medium.com/what-we-do-how-we-do-it-9a82124f7159.

Financial Officer Bolger referencing Celsius’s “world-class risk management team.”⁹⁵⁵ Finally, even when Celsius paused withdrawals, swaps, and transfers, on June 12, 2022, Celsius invoked its risk management framework, “[T]o adhere to our risk management framework, we have activated a clause in our Terms of Use that will allow for this [pause] to take place.”⁹⁵⁶

Customers said that in hindsight, they felt misled about the “extraordinary risk” Celsius was taking and did not realize there was a significant downside risk of loss.⁹⁵⁷ A customer wrote to the Examiner, “I just continue[d] to add because I thought the platform was safe . . . My whole life saving[s] [are] involved . . . Celsius got it all.”⁹⁵⁸ Another customer wrote to the Examiner that Mr. Mashinsky was “creat[ing] a sense of safety for customers by telling them every week their funds were safe.”⁹⁵⁹ A third customer wrote, “I was tricked into thinking Celsius was as safe as a bank account, by watching Alex’s AMAs . . . I ended up having 75% of my savings in there.”⁹⁶⁰

⁹⁵⁵ Get to Know Rod Bolger, Chief Financial Officer, Celsius, Celsius (June 8, 2022), <https://celsiusnetwork.medium.com/get-to-know-rod-bolger-chief-financial-officer-celsius-9c60718f205d>.

⁹⁵⁶ A Memo to the Celsius Community, Celsius (June 12, 2022), [https://celsiusnetwork.Service Agreement dated December 31, 2020, Case No. 22-1139 \[Dkt. 24-5\].medium.com/a-memo-to-the-celsius-community-59532a06ecc6](https://celsiusnetwork.Service Agreement dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5].medium.com/a-memo-to-the-celsius-community-59532a06ecc6).

⁹⁵⁷ Examiner Interview of Customer (December 8, 2022).

⁹⁵⁸ Email to the Examiner (Oct. 10, 2022).

⁹⁵⁹ Email to the Examiner (Oct. 23, 2022).

⁹⁶⁰ Email to the Examiner (Dec. 10, 2022).

This statement is not present in the video of the May 14, 2021 AMA that was posted on Celsius's YouTube channel as of the filing of this Report.¹⁰¹¹

The following week, the AMAs began to include a disclaimer at the end of each video:

all opinions expressed by Alex Mashinsky and other participants . . . on this website and the videos are solely such Speakers' opinions and do not reflect the opinions of Celsius . . . You should not treat any opinion expressed by Speakers as any legal, tax, or financial advice, or otherwise an inducement to make an investment or follow a particular strategy.¹⁰¹²

Celsius current and former employees told the Examiner, however, that Celsius continued to treat the AMAs as a channel to convey company information about its business operations to the public.¹⁰¹³

A few months later, as Marketing and Risk Team employees continued to monitor the AMAs for inaccurate and misleading statements and remove questionable content from the videos posted to YouTube, Mr. McCarthy sought access to data he hoped would ensure videos were factually accurate. He wrote to Celsius's then-Senior Manager of Analytics Ficht:

¹⁰¹¹ Celsius, Crypto Volatility and Elon Musk – Celsius AMA May 14th 2021, YouTube (May 14, 2021), <https://www.youtube.com/watch?v=4r4jnEgeWl8>.

¹⁰¹² Celsius, Bitcoin Miami and Upcoming Mega Deals – Celsius AMA May 28 2021, YouTube (May 28, 2021), <https://www.youtube.com/watch?v=C7d7rZUEfGo>. Celsius, Celsius AMA July 23 2021, YouTube (July 23, 2021), [https://www.youtube.com/Service Agreement](https://www.youtube.com/Service%20Agreement) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. [watch?v=upocw1WaTvA](https://www.youtube.com/watch?v=upocw1WaTvA); Celsius, Celsius AMA June 10 2022, YouTube (June 10, 2022), https://www.youtube.com/watch?v=GyRO_W-utXs.

¹⁰¹³ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, December 29, 2022) (recalling discussing the need to announce Celsius's use of DeFi and investment in mining on an AMA); Examiner Interview of Oleena Mak (Senior Lifestyle & Communications Marketing Manager – Celsius, December 12, 2022) (recalling that the burn of CEL was mostly communicated through AMAs).

As we develop as a company, video's role is expanding and we need to be fact checking all live video interviews and producing all scripts and ensuring facts are correct. This is to meet legal[sic] requests on what we are out putting. To be able to do this effectively I need to have greater visibility on our data than I currently do . . . Alex is obviously getting this information from somewhere and any help in connecting me to the hive mind would be greatly appreciated.¹⁰¹⁴

Mr. Fitch responded to Mr. McCarthy that the “unfortunate reality of Celsius today is that data is scattered across so many systems and therefore we lack good standards and metrics uniformly across the company,” and promised a centralized “data warehouse” that would be completed “over the next 6 months.”¹⁰¹⁵ Mr. McCarthy wrote that he “completely underst[ood] we are still building out our infrastructure.”¹⁰¹⁶ It was not until May 2022 that Celsius's Chief Financial Officer received financial-related information intended to be presented during each AMA for his approval.¹⁰¹⁷

In the fall of 2021 and early 2022, Mr. Sunada-Wong and Mr. McCarthy, among others, continued to confer about statements during livestreams and continued to remove inaccurate and misleading statements from the posted videos. For example, on September 17, 2021, Mr. McCarthy wrote to

¹⁰¹⁴ McCarthy, Tom, Re: Connecting to the hive mind, Email, CEL_Exam-00057637. Mr. McCarthy, however, told the Examiner that he had no input into the content of the AMAs and that he was unaware of any process to confirm the accuracy of information included in AMAs, either before or after they were broadcast. Examiner Interview of Tom McCarthy (Former Head of Production – Celsius, December 15, 2022).

¹⁰¹⁵ Ficht, Gabe, Re: Connecting to the hive mind, Email (July 7, 2021), CEL_EXAM-00057637.

¹⁰¹⁶ McCarthy, Tom, Re: Connecting to the hive mind, Email (July 8, 2021), CEL_EXAM-00057637.

¹⁰¹⁷ Bolger, Rod, Fwd: URGENT!!!: May 18 YouTube AMA - Needed edits, Email (May 22, 2022), CEL-UCC-00207232.

Mr. Sunada-Wong, Mr. Cohen-Pavon, and Ms. Davis: “For this edit, do you want the whole segment removed? Or just the part until Alex talks about our business becoming more like Coinbase? It contains Alex’s clue on the letter of partner and [the] community will pick up on the edit (along with others).”¹⁰¹⁸ On December 10, 2021, Mr. Sunada-Wong wrote to Mr. McCarthy, “[P]lease remove: Alex is saying that Celsius bought out an owner who has been selling CEL tokens and therefore the sideways trading of CEL ‘is out of the way.’”¹⁰¹⁹ Three days later, Mr. McCarthy confirmed that the edit was made but that YouTube had yet to “compile the new video” so the “old version” was still posted.¹⁰²⁰ On January 28, 2022, Mr. Sunada-Wong wrote to Celsius’s then-Chief Operating Officer Denizkurdu: “. . . [B]eginning in early May, we began marshaling a variety of people to [] track exactly what was being said in the AMA [] and remove unfortunate statements”¹⁰²¹

The concern about inaccurate statements during livestreamed AMAs continued to grow amongst certain employees. In March 2022, Celsius Head of Intelligence and Credit Officer Peter Graham wrote to Mr. Sunada-Wong, “Issues are material misstatements on AMA, Twitter Spaces, potentially interviews.”¹⁰²²

¹⁰¹⁸ McCarthy, Tom, Re: Delete from the AMA: Direct Deposits, Email (September 17, 2021), CEL-UCC-00207328.

¹⁰¹⁹ Sunada-Wong, Rodney, AMA YouTube Dec 10 – needed edits, Email (December 10, 2021), CEL-UCC-00207526.

¹⁰²⁰ Sunada-Wong, Rodney, AMA YouTube Dec 10 – needed edits, Email (December 10, 2021), CEL-UCC-00207526.

¹⁰²¹ Sunada-Wong, Rodney, Communication Risk, Email (January 28, 2022), CEL-UCC-00208957.

¹⁰²² Graham, Peter, Topics, Email (March 15, 2022), CEL-UCC-00208695.